

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Lynchburg Division**

**STUDENT A, STUDENT B, STUDENT C,  
and STUDENT D**, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

**LIBERTY UNIVERSITY, INC., d/b/a  
LIBERTY UNIVERSITY**,

Defendant.

**Case No. 6:20-cv-00023-NKM**

**JURY TRIAL DEMANDED**

**PLAINTIFFS' MOTION FOR LEAVE TO FILE SUR-REPLY  
IN OPPOSITION TO DEFENDANT'S MOTION TO STRIKE OR,  
IN THE ALTERNATIVE, MOTION FOR A MORE DEFINITE STATEMENT**

NOW COME Plaintiffs, and for their Motion for Leave to File a Sur-Reply, state as follows:

1. On June 15, 2020, Defendant, Liberty University, Inc., filed a Motion seeking to reveal the identities of the anonymous Plaintiffs in this case. Plaintiffs filed an Opposition to Defendant's Motion on July 17, 2020. On July 31, 2020, Defendant filed its Reply in Support of its Motion.
2. In its Reply, Defendant contends, among other things, that anonymity "prevents the University from ascertaining which fees, if any, Students A, B, C, and D actually paid for the Spring 2020 semester. Such information is vital to assessing the individual Plaintiffs' ability to represent a class of other students who may have paid different fees, whether they suffered any

damage as a result of the conduct alleged in the Amended Complaint, and whether they even have standing to bring their claims.” *See* Def. Reply at 9.

3. Defendant’s primary argument against anonymity is thus an alleged inability to conduct meaningful discovery and to assess class certification issues.

4. Defendant’s Reply omits that, prior to the Defendant filing its Reply, on July 20, 2020, Plaintiff’s counsel proposed a solution wherein Plaintiffs would remain anonymous on the Court’s public docket, but their identities would be shared with outside Defense counsel and a specifically identified cohort of individuals at Liberty, as necessary to form legal strategy and gather requested information. Anyone at Liberty who learns Plaintiffs’ identities would agree to strict confidentiality. *See* July 20, 2020 Email from K. McNew to T. Broughton (attached to proposed Sur-Reply as Exhibit 1).

5. On August 3, 2020, after filing its Reply, Defendant, through its counsel, agreed that this proposal would be consistent with what the Court would order if anonymity remains, but nevertheless rejected the proposal. *See* August 3, 2020, Email from T. Broughton to K. McNew (attached to proposed Sur-Reply as Exhibit 2).

6. Plaintiffs submit that this information bears upon the issues before the Court, and specifically whether Defendant’s argument against anonymity is legitimate or is instead a mere pretext for a desire to make Plaintiffs pay a price for bring this suit.

WHEREFORE, Plaintiffs request leave to file the attached Sur-Reply.

Respectfully Submitted,

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***Counsel for Plaintiffs and the Proposed Class***

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Leave to File Sur-Reply was filed on August 5, 2020, using the Court's C/ECF electronic filing system, which will cause a of notice of such filing to be sent to all counsel of record.

/s/ E. Kyle McNew